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OFFICE OF PETITIONS

In re Application of
Walter C. Lin
Application No. 09/442,868
Filed: November 18, 1999
Attorney Docket No. 1200471-991180

ON PETITION

This is a decision on the "Renewed Petition Under 37 C.F.R. 1.181",
filed February 6, 2003.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted
within **TWO (2) MONTHS** from the mail date of this decision. Extensions
of time under 37 CFR 1.136(a) are permitted. The reconsideration
request should include a cover letter entitled, "Renewed Petition
under 37 CFR 1.181" or "Renewed Petition under 37 CFR 1.137(b)".

The above-identified application became abandoned for failure to
timely file a proper response to the non-final Office action, mailed
September 13, 2001, which set a shortened statutory period for reply
of three (3) months. No extensions of time under the provisions of 37
CFR 1.136(a) were obtained. Accordingly, the above-identified
application became abandoned on December 14, 2001. A Notice of
Abandonment was mailed on July 16, 2002. Applicant filed a petition
in the alternative under 37 CFR 1.137(a) and 37 CFR 1.137(b). The 37
CFR 1.137(a) petition was treated as a petition under 37 CFR 1.181,
based on applicant's statement of non-receipt of an Office action, and
was dismissed in a decision mailed on January 3, 2002.

Petition Under 37 CFR 1.181:

Petitioner contends that he never received the September 13, 2001
Office action. Petitioner has not met the showing required to
establish nonreceipt of an Office action. To withdraw the holding of
abandonment due to nonreceipt of an Office action, a practitioner
must: 1) include a statement that the Office action was not received;
2) attest to the fact that a search of the file jacket and docket
records indicates that the Office action was not received; and 3)
include a copy of the docket record where the nonreceived Office
action would have been entered had it been received and docketed.¹
Regarding the docket record, in the case where the nonreceived Office
action set a three month period for reply (as in the instant case), "a
copy of the docket report showing all replies docketed for a date
three months from the mail date of the nonreceived Office action must

¹ See MPEP 711.03(c) (II).

be submitted as documentary proof or nonreceipt of the Office action."

On renewed petition, petitioner has not submitted a satisfactory copy of a docket record showing where the nonreceived Office action would have been entered had it been received and docketed.

Regarding the docket record that is required, the Manual of Patent Examining procedure states:

A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing **all** replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action.²

Here, petitioner has included a copy of a 1 page summary of the prosecution of the above-identified application. This is not persuasive evidence to show that the Office action. Petitioner must provide a docket report showing all replies that were docketed for December 13, 2001 (the date three months from the mail date of the nonreceived Office action).

If petitioner can not meet the showing required to establish non receipt of the Office action, petitioner may file a renewed petition under 37 CFR 1.137(b). A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply; (2) the petition fee (petitioner has previously submitted the petition fee); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).


Further correspondence with respect to this matter should be addressed as follows:

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Cliff Congo
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² MPEP 711.03(c)(II) (emphasis added).